THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.26616 of 2006

Dated: .11.2007

Between:

Yerramala Maddulety.

…Petitioner.

and

The Joint Collector, Kurnool, Kurnool District and two others.

…Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.26616 of 2007

ORDER:

Heard Sri K.V.Raghveer, learned counsel representing the writ petitioner and learned Government Pleader for Civil Supplies.

On 22.12.2006, Rule Nisi was issued by this Court.

The Writ Petition is filed seeking a *Mandamus* declaring the action of the 1st respondent in issuing the proceedings in Rc.CS.3/37/2006, dated 11-12-2006, without conducting proper adjudication and without verifying the records, confirming the proceedings in Rc.B/1617/2005, dated
22-12-2005, issued by the respondent, as illegal and arbitrary and consequently to set aside the orders, dated 22-12-2005, passed by the 2nd respondent.

The impugned proceedings, dated 11.12.2006, issued by the 1st respondent, read as hereunder:

"PROCEEDINGS OF THE JOINT COLLECTOR, KURNOOL
PRESENT:SRI R.S.NAIK, I.A.S.

Rc.CS.3/37/2006 Dated:11.12.2006

Sub: Civil Supplies – Kurnool District – Appeals – Orvakal Mandal – Kannamadakala(Vg) – Sri Y.Maddileti F.P.Shop dealer U/s committed certain irregularities – Authorisation cancelled – Appeal filed – Orders Issued.

Read:1.Revenue Divisional Officer, Kurnool, Procgs.No.B/1619/2005, Dt:22.12.2005.
2. Appeal filed by Sri Y.Maddileti, F.P.Shop dealer (U/s) Kannamadakala (Vg), Dt:22.1.2006.
3. Orders of the Hon'ble High Court of A.P., in W.P.No.22074/2006, Dt:26.10.2006.

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ORDER:

Through reference 2nd read above, Sri Y.Maddileti F.P.Shop dealer Kannamadakala (Vg) of Orvakal Mandal whose authorization is cancelled aggrieved by the orders of the Revenue Divisional Officer, Kurnool issued in the reference 1st read above filed an appeal petition under provision 20(1) of APSPDS (Control) Order 2001 before the Joint Collector, Kurnool stating that the orders passed by the Revenue Divisional Officer, Kurnool are against law weight of evidence and probabilities of the case requesting to set a side the orders of the Revenue Divisional Officer, Kurnool.

Through the reference 1st read above the Revenue Divisional Officer, Kurnool taking into view of the Mandal Reenue Officer's report and after giving due opportunity to the appellant and examining the explanation of the appellant, has cancelled the authorization stating that the delinquent dealer has failed to produce any evidence.

Meanwhile the petitioner approached the Hon'ble High Court of A.P., Hyderabad, seeking orders with a direction to the

appellant authority to dispose the case within four weeks.

Accordingly heard the case on 25.11.2006. The Counsel for the appellant has attended and argued that his client has issued all quantities properly worked without any complaint since 23 years and stated that the charges framed against him are false and requested to restore the authorization.

As could seen from the details on records and heard the arguments. During the argument the delinquent F.P.Shop dealer has failed to submit any documentary evidence in support of his claim simply denied all the charges even at the time hearing the case. It is established that the dealer has contravened the conditions 6 and 7 of authorization and he is failed to maintain F.P.Shop in accordance with PDS guidelines and violated the A.P.P.D.S., (Control) Order – 2001.

In the circumstances explained above I deem it appropriate to order that there is no need to interfere in the orders passed by the lower Court. As such the orders passed by the Revenue Divisional Officer, Kurnool vide proceeding No.B.1617/2005, Dt:22.1.2006 are upheld. Accordingly the appeal is disposed off.

Sd/-R.S.Nail
Joint Collector
Kurnool.
//t.c.b.o.//
Assistant Supply Officer

To
Sri.Y.Maddileti F.P.Shop dealer, Kannamadakala (Vg) of Orvakal Mandal through.
Sri C.Satyanarayana, Advocate, Kurnool.
The Revenue Divisional Officer, Kurnool for taking necessary action.
Copy to the Mandal Revenue Officer, Orvakal for information."

It is averred in the affidavit filed in support of the writ petition that the petitioner had been appointed as a permanent Fair Price Shop Dealer by the 2nd respondent - Revenue Divisional Officer and for the

past 20 years, he had been distributing the essential commodities to the cardholders, without any complaint from the cardholders and appointing authorities. While so, the 3rd respondent – Mandal Revenue Officer sent a report to the 2nd respondent vide proceedings, dated 02-12-2005, stating that basing on the allegations made by some of the villagers, he had visited the village and conducted an open enquiry with cardholders. Basing on the said report, the 2nd respondent issued a show cause notice, framing two charges viz., that the petitioner had distributed the essential commodities with lesser weighment and did not distribute the same till the end of month to the cardholders and that he had not maintained acquaintance register, sales register and stock board properly. The petitioner had submitted his explanation to the 2nd respondent denying the charges and requested to drop the proceedings against him, since they were initiated to cancel his authorization, and for appointing another person, having political background. It is also averred that the 2nd respondent, without conducting any enquiry and without fixing the date of hearing, held that the petitioner did not produce any recorded evidence and that the charges were proved beyond doubt and cancelled his authorization vide proceedings dated 22-12-2005, which cannot be sustained. It is further averred that the charges framed against him are of technical in nature. The stock registers and acquaintance registers, were being checked by the 2nd and 3rd respondents regularly and they did not find fault with at any point of time earlier. The charges do not evidence any black marketing or diversion of stocks. The 2nd respondent had not even supplied a copy of the report alleged to have been submitted by the 3rd respondent along with the show cause notice. Further, aggrieved

by the orders of the 2nd respondent, the petitioner preferred an appeal before the 1st respondent and as the appeal is still pending, he filed W.P.No.22074 of 2006 to set aside the orders of the 2nd respondent. Through its order, dated 26.10.2006, the said writ petition was disposed of, with a direction to the 1st respondent to dispose of the appeal within a period of four weeks. As per the directions of this Court, the petitioner had produced the records and the 1st respondent without looking into the evidence, held that he had contravened conditions 6 and 7 of the authorization and confirmed the order of the 2nd respondent by the impugned order. Hence, this Writ Petition.

The order made by the Revenue Divisional Officer, Kurnool, the 2nd respondent herein, reads as hereunder:

"PROCEEDINGS OF THE REVENUE DIVISIONAL OFFICER, KURNOOL

PRESENT: A.SURYA PRAKASH, M.A., M.Phil.,

Rc.B1617/2005 Dt:22.12.2005

Sub: - Civil Supplies – Orvakal Mandal – Kannamadakala village – Sri Yerramala Maddulety, F.P.Shop Dealer, Shop No.19 – committed certain irregularities – show cause notice issued – explanation submitted – orders – issued.

Ref: 1. Mandal Revenue Officer, Orvakal Rc.B/276/2005, Dt.2.12.2005.

2. This Office show cause notice even number, dated 8.12.2005.

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ORDER:

The Mandal Revenue Officer, Orvakal in the reference cited has reported that some villagers of Kannamadakala village leveled certain allegations against Sri Yerramala Maddulety, F.P.Shop Dealer, Shop No.19, Kannamadakala (V) of Orvakal (M).

The Mandal Revenue Officer, Orvakal reported that he

has got the matter enquired with the Mandal Revenue Inspector, Orvakal. The Mandal Revenue Officer reported that the Mandal Revenue Inspector has gone to the village and conducted open enquiry on 26.11.2005 that he enquired the cardholder, that the cardholders have stated that they are receiving Essential Commodities with lesser weighment, that the F.P.Shop Dealer has not maintained stock board properly, that the F.P.Shop Dealer is not maintaining stock register and acquittance register properly and the Mandal Revenue Officer, Orvakal has recommended for taking necessary action against the F.P.Shop Dealer, Kannamadakala (V).

In view of the above, the following charges are framed against Sri Y.Maddulety, FP Shop Dealer, Shop No.9, Kannamadakala (V) of Orvakal (M).

CHARGE – 1: The FP Shop Dealer is distributing the Essential Commodities with lesser weighment and also not distributing the Essential Commodities till the end of month to the cardholders.

Explanation: - He stated that he is distributing Essential Commodities to the cardholders as per norms.

CHARGE – II: That the FP Shop dealer has not been maintaining acquittance Register, Sales register and stock board properly.

Explanation:- He stated that he is maintaining all registers properly.

In support of the version of the delinquent did not produce any recorded evidence for having rejected the charges. In view of the above all the charges are proved beyond doubt and therefore the authorization of Sri Y.Maddulety, F.P.Shop Dealer, Kannamadakala Village, Orvakal Mandal, is hereby cancelled.

(An appeal lies before the Joint Collector, Kurnool, within 30 days from the date of receipt of this order).

Sd/- A.Surya Prakash
Revenue Divisional Officer
KURNOOL

//t.c.b.o.//
Administrative Officer

To
SriY.Maddulety,
Kannamadakala village,
Orvakal Mandal.
Copy to the Mandal Revenue Officer, Orvakal for necessary action.
Copy submitted to the Collector (CS), Kurnool.

In duplicate through the MRO, Orvakal for service and resubmission of served copy to this office."

In the counter-affidavit filed on behalf of the respondents, it is denied that the petitioner was distributing essential commodities without any complaint from the cardholders. Petitioner's authorization was cancelled, since he had committed certain irregularities. It is further stated that the 3rd respondent had reported that 24 villagers of Kannamadakala village lodged a complaint, with regard to the irregularities committed by the F.P. Shop Dealer, and that same was forwarded to the Mandal Revenue Inspector, and the MRI, conducted an open enquiry with the cardholders, who stated that they were receiving Essential Commodities with lesser weighment and was irregular in distribution and was also black marketing kerosene and rice. It is also stated that the petitioner failed to produce the records viz. sales register, stock register and acquittance register maintained by him for verification and did not cooperate in the enquiry and sent report to the Revenue Divisional Officer, Kurnool for taking further action against the petitioner and thereupon, the 2nd respondent had issued a show cause notice calling for an explanation. The allegation of the petitioner that without conducting any enquiry, nor fixing the date of hearing, his authorization was cancelled, was denied. Though the petitioner was given an opportunity of personal hearing, and also notice, he did not avail and instead, he filed his written representation before the Revenue Divisional Officer, Kurnool, on 12-12-2005,

denying the charges. It is stated that the petitioner did not produce any evidence, nor sought for personal hearing, and hence, the same was disposed of on the basis of the material available. The contentions of the petitioner that the charges framed against him are only technical in nature and that the respondents were checking his F.P.Shop Stock register and acquittance registers regularly, are also denied. It will be difficult to know about the proper distribution of essential commodities to the cardholders, if stock register and acquittance register are not maintained properly. The petitioner had submitted his explanation for the charges framed and denied the contention that he was not served with any charge memo. The 1st respondent had disposed of the appeal filed by the petitioner vide proceedings dated 11-12-2006. The contention that the 1st respondent confirmed the orders of the 2nd respondent without looking into the evidence, nor calling for the records is also denied. In the order of the 1st respondent itself it was stated that the petitioner had failed to produce any documentary evidence in support of his claim, but simply denied the charges even at the time of hearing the case and the orders were passed basing on the material available on record and there is no legal infirmity.

These are the respective stands taken by the parties.

The order made by the primary and the appellate authorities already has been specified supra and it is true that no revision had been filed and for the reasons best known to him, the petitioner had approached this Court straight away. For charge No.1, the petitioner explained that he had been distributing the essential commodities to cardholders as per the norms and for the 2nd charge, it is stated that he is maintaining the records properly and it is recorded that no evidence had been produced to substantiate his stand and accordingly, the

orders were made by both the primary and the appellate authorities, as well. The

1st respondent – Joint Collector, Kurnool, recorded that the delinquent – fair price shop dealer, had failed to submit any documentary evidence in support of his claim, but simply denied all charges, even at the time of hearing of the case. It is established that the dealer had contravened conditions 6 and 7 of authorization and he failed to maintain the fair price shop in accordance with PDS guidelines and violated the APPDS (Control) Order 2001. These are the reasons, which had been recorded.

In the light of the nature of charges and also the orders made by the primary authority and the appellate authority, this Court is of the considered opinion that the 2nd respondent shall supply the petitioner with a report of the Mandal Revenue Officer and also further receive the evidence, if any, to be placed by the petitioner and decide the matter expeditiously, in accordance with law. This Court is taking this view in the light of the nature of the orders made by both the primary authority and the appellate authority and since satisfied that the reasons recorded would clearly reflect that all the aspects had not been appreciated in proper perspective.

In the light of the same, the orders made by both the appellate authority and also the primary authority, respondents 1 and 2, are hereby quashed and the matter is remitted to the 2nd respondent to conduct further enquiry afresh, after affording opportunity on the basis referred to supra and decide the matter afresh in accordance with law as expeditiously as possible at any rate within a period of six weeks from the date of receipt of a copy of this order.

Accordingly, the writ petition is allowed to the extent indicated above. There shall be no order as to costs.

(P.S.NARAYANA, J)

.11.2007

GJ